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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,861	11/05/2003	Phillip Eugene Koloff JR.	9D-HR-25403	7798
7590 11/04/2005				
John S. Beulick Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102		EXAMINER AYRES, TIMOTHY MICHAEL		
		ART UNIT 3637 PAPER NUMBER		

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/701,861

Applicant(s)

KOLOFF ET AL.

Examiner

Timothy M. Ayres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☒ Claim(s) 18-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/11/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

This is a first office action on the merits of application SN 10/701,861.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-7, 9, and 11-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The term "substantially" in claims 1, 9, and 11 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear if "substantially" encompasses brackets that are mirror images or if it is just manufacturing tolerances.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

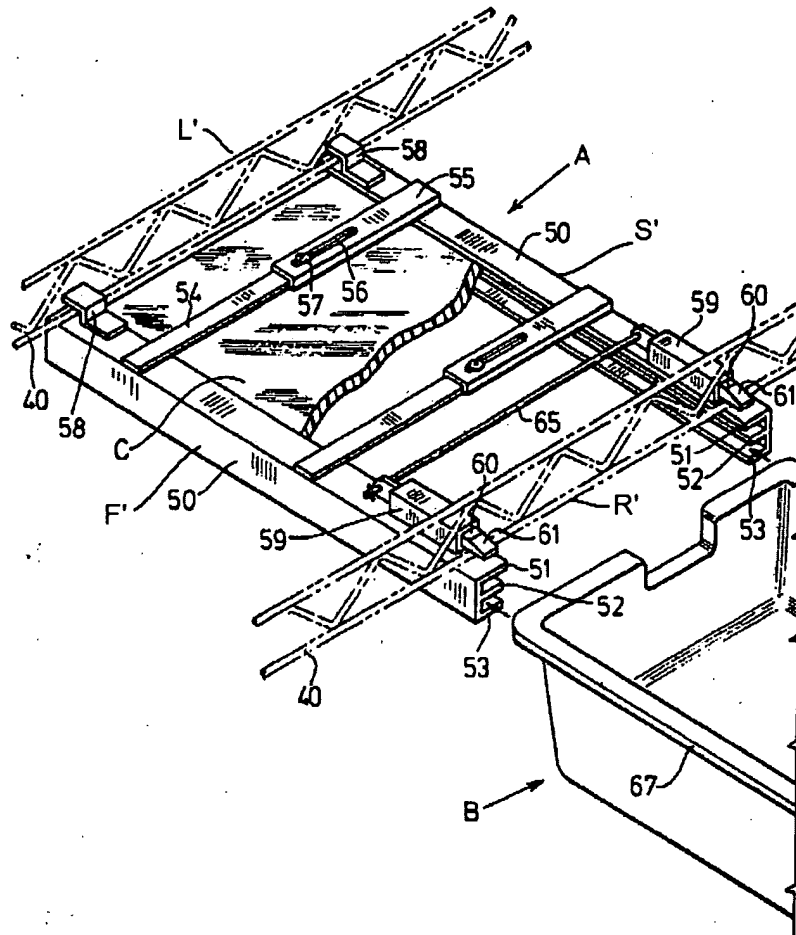
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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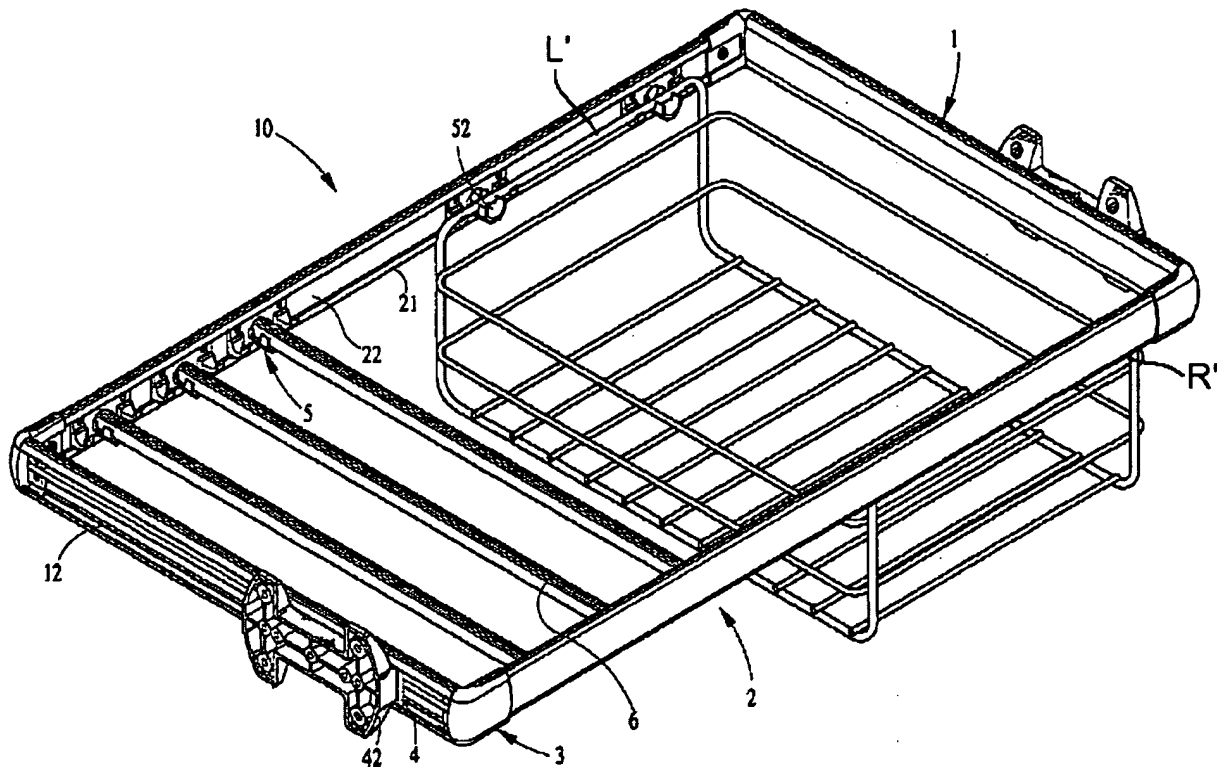
granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 8-11, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,241,668 to Carroll. Carroll '668 discloses a drawer assembly with a pan support (A) made up of a wire member (35,40) having a first side (R') and a second side (L'). A first bracket (F') coupled to the first side (R') so that is removable without tools by pulling on a rod (65) to release latches (61). A second bracket (S') coupled to the second side (L') so that the second bracket (S') is removable without tools also when the rod (65) is pulled. The second (S') bracket is substantially identical to the first bracket (F'). The first bracket (F') is coupled to the first side (R') by the latch member (61) and the second bracket (S') is coupled to the second side (L') by a hook member (58) The term refrigerator is nomenclature which is given no patentable weight.



Carroll '668 Figure 3

6. Claims 8 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,938,784 to Yang. Yang '784 discloses a pan support (10) that has a wire member having a first side (R') and a second side (L'). Two brackets (5) support the first side wire member (R') and two other brackets (5) support the second side wire members (L'). The brackets (5) are substantial identical and the wire members snap into the hooks (53) on the brackets (5) so that they are removable without tools. The brackets (5) have two coupling systems too hold the wire basket or the rods (6).



Yang '784 Figure 2

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

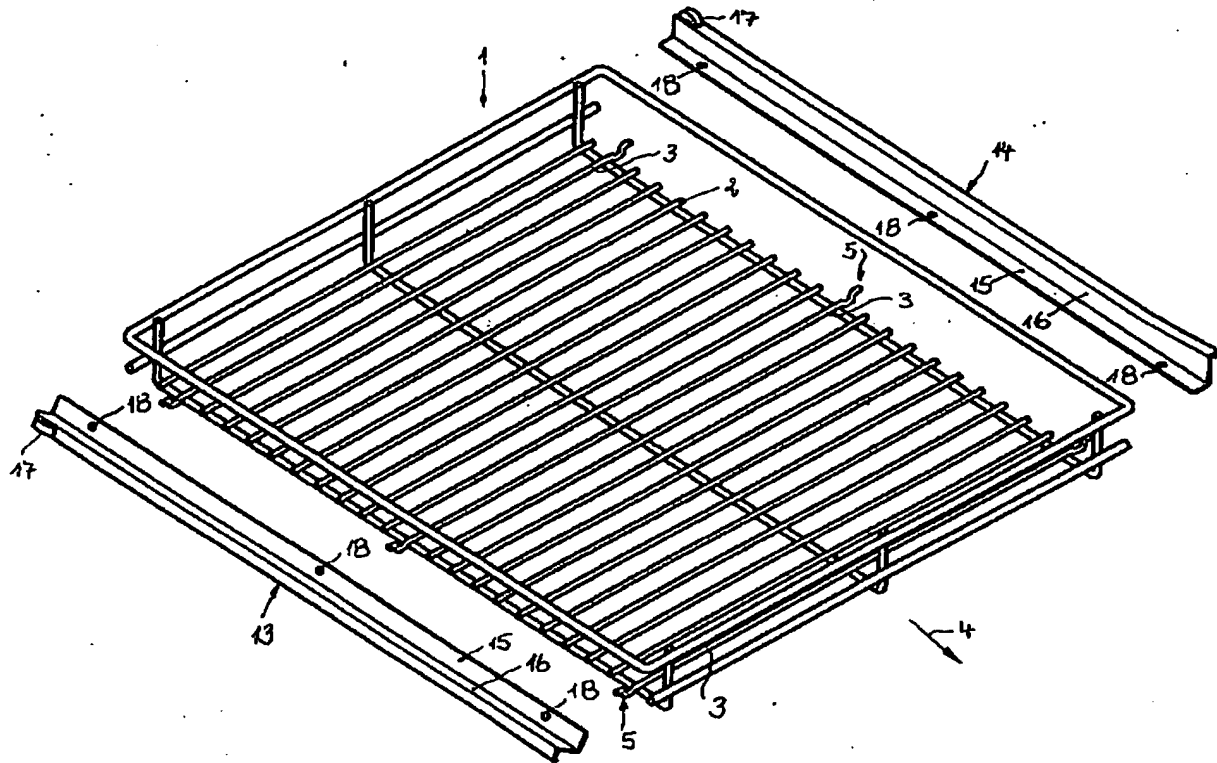
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 296 14 997 to Kesseboehmer in view of U.S. Patent 4,967,989 to Bender. Kesseboehmer '997 discloses a pan support wire member (1,3) with hooks (5) that project lateral on the sides to be received in apertures (18) on a rail (15) of a bracket (14). The bracket (14) has a sidewall (16), a first rail (13) and a second rail (15). Kesseboehmer '997 does not disclose expressly the first rail with slots sized to receive a u-shaped member. Bender '989 discloses a bracket (14) with a sidewall, a first rail, and a second rail. The first rail has a plurality of slots (22) and the second rail has a plurality of apertures (18). At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the bracket of Kesseboehmer and add slots as Bender teaches so that objects can be attached to both rails. "Sized to receive" is taken to mean that slot has to be capable of receiving a U-shaped member and bender's slot is capable of receiving a U-shaped member of some size.



Kesseboehmer '997 Figure 1

***Allowable Subject Matter***

10. Claims 3-7 and 12-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Claims 18-20 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 2,386,150 to Swedman discloses a refrigerator with a wire member to support a pan. U.S. Patent 5,251,974 to Beals discloses a drawer with wire members coupling to apertures in the sides of the drawer. U.S. Patent Publication 2003/0173882 to Koons discloses a refrigerator drawer assembly with a wire pan and brackets that attach to the pan with slots and flanges. U.S. Patent 3,565,382 to Passarelli discloses a bracket that has two different coupling systems. U.S. Patent 4,139,174 to Olson discloses a bracket that has a slot that receives the u-shape wire member of a hanger. U.S. Patent 1,459,404 to Kleffman discloses a bracket with apertures and a slot to receive a wire member.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TMA  
10/27/05



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